

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19711
Docket Number CL-19827

C. Robert Roadley, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7107)
that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it failed to notify employe F. Herner in writing of the precise charge against him and withheld him from service pending investigation on an imaginary accusation.

2) Carrier's action in dismissing employe Herner after not receiving a fair and impartial investigation was unjust, unreasonable, arbitrary and capricious; the record having failed to show any reasonable proof of guilt of any alleged intimidating remarks.

3) Carrier shall now be required to return employe Herner to Carrier service with all rights unimpaired, with allowance of payment for all time lost.

4) Carrier shall compensate employe Herner six percent (6%) per annum on all sums due and withheld as a result of this violative action.

OPINION OF BOARD: Claimant Herner was dismissed from service following suspension and investigation involving the following charge contained in Carrier's March 17, 1971 Notice:

"Formal investigation will be conducted at 9:00 A.M. on Thursday, March 18, 1971, in Room 63, Fullerton Avenue Building, 2423 North Southport Avenue, Chicago, Illinois, to develop all facts and circumstances involving alleged intimidation remarks made by you to Mr. Struwe on March 17, 1971, at 11:30 A.M., which remarks would tend to create a reasonable apprehension on the part of Mr. Struwe concerning the safety of himself and members of his family.

At the investigation you may be represented by one or more duly accredited representatives."

One witness appeared at the investigation and testified against Claimant. His testimony consisted principally of the following statement:

"On the morning of March 17, 1971, at about 11:30 A.M. in conversation with Mr. Herner, he stated: You have a wife and kids to worry about and I'm all mixed up. I don't know what I might do and I've got some crazy friends. I could fix it so something would happen to them and you'd never know I had anything to do with it. This isn't a treat but I'm just telling you how things are. I'm all messed up and I don't know what I might do."

No additional testimony was adduced at the Hearing either by the Carrier or Petitioner. Importantly, Petitioner declined to cross-examine Carrier's witness and only perfunctorily denied the charge at the conclusion of the Hearing.

Before this Board Petitioner seeks reversal of the discipline principally on the theory that:

"No man should be found guilty of a disciplinary charge solely on the unsubstantiated evidence of a sole witness."

In support of this principle, Employees cite several Awards of both Special Boards of Adjustment and Divisions of the National Railroad Adjustment Board. In this case, Petitioner's argument lacks substance. The record of the investigation discloses that outside of a concluding perfunctory denial, Petitioner made no effort to seriously refute the charge or challenge the testimony of Carrier's witness. His conduct at the investigation bordered on the ridiculous. For instance, on six occasions he refused to answer the following question:

"Mr. Herner, do you have a duly accredited representative of your choice present to represent you?"

even though three Union representatives were present in the room at the time. Additionally, he called three witnesses and then refused to adduce testimony from them.

From a review of the entire record in this case, we will hold that the Carrier met its burden at the investigation. The discipline will not be disturbed and the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killian
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1973.